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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-5781

FRANK L. RAKAS and LONNIE L. KING,

Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondents.

ON WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT

BRIEF FOR RESPONDENTS

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TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	2
SUMMARY OF ARGUMENT	3
ARGUMENT:	
I. The "Legitimately On The Premises" Theory Of Standing Is Abrogated In Non-Possessory Offenses	4
II. The "Directed At" Theory Of Standing Should Be Rejected As It Seeks To Further Encroach Upon The Public Interest By An Unwarranted Extension Of The Exclusionary Rule	7
CONCLUSION	9

TABLE OF AUTHORITIES

Cases:	Page
Alderman v. *United States*, 394 U.S. 165, 89 S. Ct. 961, 22 L. Ed. 176 (1969)	7, 8
Brown v. *United States*, 411 U.S. 223, 93 S. Ct. 1565, 36 L. Ed. 2d 208 (1973)	3, 5, 6, 8
Jones v. *United States*, 362 U.S. 257, 80 S. Ct. 725, 4 L. Ed. 2d 697 (1960)	3, 4, 5, 7, 8
Mabra v. *Gray*, 518 F. 2d 512 (7th Cir. 1975)	7
Mancusi v. *DeForte*, 392 U.S. 364, 88 S. Ct. 2120, 20 L. Ed. 2d 1154 (1968)	6
Simmons v. *United States*, 390 U.S. 377, 88 S. Ct. 967, 19 L. Ed. 2d 1247 (1968)	5, 8
Sumrall v. *United States*, 382 F. 2d 651 (10th Cir. 1967), *cert. denied*, 389 U.S. 1055, 88 S. Ct. 806, 19 L. Ed. 2d 853 (1968)	7
Miscellaneous:	
Fed. R. Cr. Pr., Rule 41(e)	4

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BRIEF FOR RESPONDENTS

QUESTIONS PRESENTED

1. Whether the "legitimately on the premises" theory of "automatic" standing confers upon passengers in an automobile the right to challenge a disputed search and seizure where they are charged with a non-possessory offense.

2. Whether there is compelling reason for this Court to extend the exclusionary rule to confer standing to challenge a disputed search and seizure on one who merely claims the search to have been "directed at" him.

SUMMARY OF ARGUMENT

I.

The "legitimately on the premises" theory of the "automatic" standing doctrine formulated in *Jones* v. *United States,* 362 U.S. 257, 80 S. Ct. 725, 4 L. Ed. 2d 697 (1960) does not confer standing upon petitioners who seek suppression of evidence admitted at their trial. That theory of standing has no application to non-possessory offenses. If such a theory ever had such application it was abandoned by this Court in *Brown* v. *United States,* 411 U.S. 223, 93 S. Ct. 1565, 36 L. Ed. 2d 208 (1973).

II.

The "directed at" theory of standing has never been recognized by this Court. It should not now be adopted. There are no compelling public policy considerations to warrant such a radical departure from the well established rule that only those whose rights were violated by the search itself have standing to urge a Fourth Amendment violation. To adopt such a theory would expand the exclusionary rule so that *anyone* against whom illegally seized evidence *might* be used could object. Furthermore, the search of the automobile was not directed against petitioners.

ARGUMENT

I.

THE "LEGITIMATELY ON THE PREMISES" THEORY OF STANDING IS ABROGATED IN NON-POSSESSORY OFFENSES.

In formulating the doctrine of "automatic" standing in *Jones* v. *United States,* 362 U.S. 257, 80 S. Ct. 725, 4 L. Ed. 2d 697 (1960), this Court was concerned with the two-pronged dilemma of prosecutorial self-contradiction and self-incrimination in a setting where possession of the seized evidence at the time of the disputed search and seizure was an essential element of the offense charged. To resolve this conflict, this Court held that the possession, on the basis of which the defendant there was convicted, sufficed to give him standing under Rule 41(e), Fed. R. Cr. Pr. The Court thus recognized that the same possession which both convicts and confers standing eliminates the conventional requirements of alleging an interest in the premises searched or the property seized. The opinion continued on, by way of dicta, to observe, as a second theory, that even if the offense was non-possessory, a "requisite interest in the premises" basis for standing was satisfied by testimony that the petitioner, who had a key thereto, was legitimately present in the apartment where the search was conducted.

The language in *Jones, supra,* to the effect that:

> No just interest of the government in the effective and rigorous enforcement of the criminal law will be hampered by recognizing that anyone legitimately on the premises where a search occurs may challenge its legality by way of a motion to suppress, when its fruits are proposed to be used against him. (362 U.S. 257, 267, 80 S. Ct. 724, 734, 4 L. Ed. 2d 697, 706)

should not be construed as expanding the conventional standing criteria to non-possessory cases. To so hold would render meaningless this Court's refusal in *Jones* to there address the issue of self-incrimination. Indeed, this Court noted that the chance that the allegations made in a motion to suppress could be used against the accused at trial was by no means an inevitable holding. *Id.* at 262.

As this Court stated in *Simmons* v. *United States,* 390 U.S. 377, 390, 88 S. Ct. 967, 974, 19 L. Ed. 2d 1247 (1968), ". . . there will be occasions, *even in prosecutions for non-possessory offenses,* when a defendant's testimony will be needed to establish standing." (Emphasis Added) *Simmons* thus resolved that issue, acknowledging that the Court in *Jones* relaxed the standing requirements to, in part, avoid having to there resolve the self-incrimination issue. This Court further noted in *Simmons* that:

> This Court has never considered squarely the question whether defendants charged with non-possessory crimes, like Garrett, are entitled to be relieved of their dilemma entirely. *Id.* at 391.

The Court there found it, ". . . intolerable that one constitutional right should have to be surrendered in order to assert another", thus rendering unnecessary for all time the propositions formulated in *Jones* as to possessory offenses. Thus, *Simmons* delivered the final death blow to the dilemma found so abhorrent in *Jones.*

To lend further support to respondents' argument on this point, this Court announced in *Brown* v. *United States,* 411 U.S. 223, 229, 93 S. Ct. 1565, 1569, 36 L. Ed. 2d 208 (1973), that it would reserve the question of the continued viability of the "automatic" standing doctrine of *Jones* (in light of *Simmons*) for a case involving a possessory offense.

Thus, this Court clearly indicated that *Jones* was to be viewed as applying only to possessory offenses, notwithstanding the Court's earlier dicta to the contrary in *Mancusi* v. *DeForte,* 392 U.S. 364, 368, fn. 5, 88 S. Ct. 2120, 2123, fn. 5, 20 L. Ed. 2d 1154 (1968).

That the "legitimately on the premises" theory had been rejected as an independent basis for standing is further evidenced by this Court's holding in *Brown,* that there was no reason to afford the *Jones*-type standing where there was no risk of either self-incrimination or prosecutorial self-contradiction. This Court noted in *Brown* that the vice of the latter would not necessarily warrant the survival of the former since *Simmons* had removed its dangers. 411 U.S. 223, 229, 93 S. Ct. 1565, 1569, 19 L. Ed. 2d 1247 (1968).

Here, as in *Brown,* the petitioners could have asserted a possessory interest in the property seized (sufficient to confer standing under the conventional rule) without any danger of self-incrimination or the vice of prosecutorial self-contradiction. But they did not do so. Here, as in *Brown,* there is simply no reason to afford *Jones*-type standing as there is no risk of either self-incrimination or prosecutorial self-contradiction. This case, as in *Brown,* involves a non-possessory offense and it is not necessary to confer standing on the basis of the petitioners' presence in the automobile which was searched since they could have established standing under the conventional rule.

II.

THE "DIRECTED AT" THEORY OF STANDING SHOULD BE REJECTED AS IT SEEKS TO FURTHER ENCROACH UPON THE PUBLIC INTEREST BY AN UNWARRANTED EXTENSION OF THE EXCLUSIONARY RULE.

The language of *Jones* v. *United States,* 362 U.S. 257, 261, 80 S. Ct. 725, 730-731, 4 L. Ed. 2d 697, 702 (1960), stating that to qualify as an aggrieved person one must have been a victim of a search, *one against whom the search was directed,* does not create an additional category of persons having standing. The phrase, *one against whom the search was directed,* is simply another way of describing a victim of a search or seizure. *Mabra* v. *Gray,* 518 F. 2d 512, 514 (7th Cir. 1975). ("The description of (1) 'a victim of a search' and (2) 'one against whom the search was directed' may be read as appositive." *Id.* fn. 2); *See also Sumrall* v. *United States,* 382 F. 2d 651, 654-655 (10th Cir. 1967), *cert. denied,* 389 U.S. 1055, 88 S. Ct. 806, 19 L. Ed. 2d 853 (1968).

To now fashion a new ground for standing under a "directed at" theory would do violence to the well established boundaries of the exclusionary rule. It would unbearably strain the Fourth Amendment. As this Court noted in *Alderman* v. *United States,* 394 U.S. 165, 174-175, 89 S. Ct. 961, 967, 22 L. Ed. 2d 176 (1969), ". . . we are not convinced that the additional benefits of extending the exclusionary rule to other defendants would justify further encroachment upon the public interest. . . ." Such a holding would annul the well established policy of this Court that, ". . . a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself, not by those who are aggrieved solely by the introduction of damaging evidence." *Id.* at 172.

It is submitted that there are no compelling public policy considerations to warrant such a radical departure, and the resulting expansion of the exclusionary rule, allowing *anyone* against whom illegally seized evidence *might* be used to object. The rights of those whose privacy has been truly invaded are adequately protected by this Court's decisions in *Jones, Brown, Simmons,* and *Alderman.*

Moreover, even if this Court were to adopt such a rule, it is submitted that the proof in this case is totally lacking to show that the search of the Clontz automobile was "directed at" petitioners. An individual fitting the general description of one of the armed robbers was observed exiting and later entering the vehicle which was searched. (A. 16-17, 20-21). A search of the petitioners' persons produced nothing. The search of the vehicle, which corresponded to the general description of the getaway car (A. 15-16, 20), was designed to obtain evidence relating to the armed robbery. It is, therefore, not accurate to describe the search of the automobile as one which was directed against petitioners.

CONCLUSION

For the foregoing reasons, respondents pray that the petitioners' convictions be affirmed.

Respectfully submitted,

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